

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**CIANELLI OPERATING, INC. f/k/a
PRE-CAST SPECIALTIES, INC.**

and

Case 12-CA-155900

**CONSTRUCTION AND CRAFT WORKERS LOCAL
UNION NO. 1652, LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO**

**PRE-CAST SPECIALTIES, LLC f/k/a
PCS ACQUISITIONS, LLC**

and

Case 12-CA-167524

**CONSTRUCTION AND CRAFT WORKERS LOCAL
UNION NO. 1652, LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO**

ORDER¹

The Motion for Partial Summary Judgment filed by Respondent Cianelli Operating, Inc. f/k/a Pre-Cast Specialties, Inc. is denied. The Respondent has failed to establish that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. This denial is without prejudice to the Respondent's right to renew its arguments to the administrative law judge and before the Board on any exceptions that may be filed to the judge's decision, if appropriate.²

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² The Respondent seeks summary judgment on whether a *Transmarine* remedy is appropriate in this case. Member Miscimarra agrees with the denial of Respondent's motion as stated in the Board's order, but he believes that the General Counsel's failure to respond to the Respondent's argument is deficient, and in a different case could be grounds to grant the motion for summary judgment. As Member Miscimarra stated in *L'Hoist North America of Tennessee, Inc.*, 362 NLRB No. 110, slip op. at 3 (2015) (concurring), "in response to a motion for summary judgment, I believe the General Counsel at least must explain in reasonably concrete terms why a hearing is required."

Dated, Washington, D.C., June 23, 2016

PHILIP A. MISCIMARRA,	MEMBER
KENT Y. HIROZAWA,	MEMBER
LAUREN MCFERRAN,	MEMBER

Under the standard that governs summary judgment determinations, this will normally require the General Counsel to identify material facts that are genuinely in dispute.” See also *Leukemia and Lymphoma Society*, 363 NLRB No. 124, slip op. at 2 (2016) (Member Miscimarra, dissenting) and *Charter Communications*, Case 07-CA-140170 (Order issued 4/26/16) (Member Miscimarra concurring with the denial of the respondent’s motion for summary judgment despite the “conclusory argument” made by the GC because “scrutiny of the parties’ pleadings reveal[ed] that genuine issues of material fact exist....”). In the instant case, Member Miscimarra agrees with the denial of partial summary judgment because scrutiny of the parties’ pleadings reveals that genuine issues of material fact exist regarding whether a *Transmarine* remedy is appropriate in this case. See *Carney Hospital*, 350 NLRB 627, 630 (2007).